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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/522,776

01/31/2005

Hideki Komai

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/522,776	Applicant(s) KOMAI ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>various</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Noriaki (09-074999).

PAJ abstract discloses an oil and fat composition for frying that contains oil with 0.005-10% organic acid monoglyceride with an HLB of more than 3 and 0.005-10 wt% polyglycerol fatty acid ester having an HLB of more than 5 (see PAJ English Abstract). Although contact angle is not mentioned in the abstract, applicant's specification, at page 6, describes the achievement of a desired contact angle as obtained by adding an emulsifying agent with an HLB of 4-12. The amount of emulsifying agent required is shown on page 7, line 16, as being from .4-10%. The emulsifying agents are described as dissolved in the oil so one of ordinary skill in the art would anticipate that they are liquid. Given applicants' specification, one of ordinary skill in the art would expect the frying oil composition of Noriaki to provide a coating for food during frying that is the

same as that set forth in the claims. The food would be immersed in oil during cooking.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Akiko (PAJ 09-163929) as further evidenced by Schwartzberg.

Akiko discloses an oil composition for frying that includes succinic monoglyceride ester. The HLB value of succinic monoglyceride ester is a property that is inherent to the compound. Schwartzberg provides evidence that the HLB value of this emulsifying agent is 5.3. Although contact angle is not mentioned in the abstract, applicant's specification, at page 6, describes the achievement of a desired contact angle as obtained by adding an emulsifying agent with an HLB of 4-12. Given applicants' specification, one of ordinary skill in the art would expect the frying oil composition of Akiko to provide a coating for food during frying that is the same as that set forth in the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noriaki (09-074999).

PAJ abstract discloses an oil and fat composition for frying that contains oil with 0.005-10% organic acid monoglyceride with an HLB of more than 3 and 0.005-10 wt% polyglycerol fatty acid ester having an HLB of more than 5 (see PAJ English Abstract). Although contact angle is not mentioned in the abstract, applicant's specification, at page 6, describes the achievement of a desired contact angle as obtained by adding an emulsifying agent with an HLB of 4-12. The amount of emulsifying agent required is shown on page 7, line 16, as being from .4-10%. The emulsifying agents are described as dissolved in the oil so one of ordinary skill in the art would anticipate that they are liquid. Given applicants' specification, one of ordinary skill in the art would expect the frying oil composition of Noriaki to provide a coating for food during frying that is the same as that set forth in the claims. The claims appear to differ from Noriaki abstract in the actual frying of the food in oil but frying foods is a well known expedient. Food is typically immersed in oil during cooking and would be cooked and coated during the frying process. It is appreciated that the use of radiation heating or steam heating is not mentioned but the

frying process would be expected to heat the water in the frying food to steaming. Further to coat foods with oil prior to cooking is a well known way to create a frying flavor without adding a lot of extra calories from oil.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akiko (PAJ 09-163929) as further evidenced by Schwartzberg.

Akiko discloses an oil composition for frying that includes succinic monoglyceride ester. The HLB value of succinic monoglyceride ester is a property that is inherent to the compound. Schwartzberg provides evidence that the HLB value of this emulsifying agent is 5.3. Although contact angle is not mentioned in the abstract, applicant's specification, at page 6, describes the achievement of a desired contact angle as obtained by adding an emulsifying agent with an HLB of 4-12. Given applicants' specification, one of ordinary skill in the art would expect the frying oil composition of Akiko to provide a coating for food during frying that is the same as that set forth in the claims. The claims appear to differ from Akiko abstract in the actual frying of the food in oil but frying foods is a well known expedient. Food is typically immersed in oil during cooking and would be cooked and coated during the frying process. It is appreciated that the use

of radiation heating or steam heating is not mentioned but the frying process would be expected to heat the water in the frying food to steaming. Further to coat foods with oil prior to cooking is a well known way to create a frying flavor without adding a lot of extra calories from oil.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

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access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794